

John Karl Buche (SBN 239477)  
Sean M. Sullivan (SBN 254372)  
BUCHE & ASSOCIATES, P.C.  
875 Prospect, Suite 305  
La Jolla, California 92037  
Telephone: 858.459.9111  
Facsimile: 858.459.9120  
[jbucher@buchelaw.com](mailto:jbucher@buchelaw.com)  
[ssullivan@buchelaw.com](mailto:ssullivan@buchelaw.com)

**Attorneys for Defendants,  
TOTAL VEIN SOLUTIONS, LLC**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

1        WHEREAS, Defendant Total Vein Solutions, LLC d/b/a Total Vein Systems (“TVS”)  
2 submitted expert reports of both Dr. Wayne Gradman (“Gradman”) and David Draper (“Draper”) on  
3 May 7, 2010;

4        WHEREAS, Plaintiff Tyco Healthcare Group LP d/b/a VNUS Medical Technologies  
5 (“VNUS”) objected to certain portions of the Gradman and Draper reports as containing untimely  
6 opinions on enablement issues;

7        WHEREAS, TVS asserted that such opinions were timely in that said portions of the reports  
8 rebutted VNUS’s own infringement expert report;

9        WHEREAS, in accordance with the Local Rules and governing court orders, VNUS and  
10 TVS submitted a joint statement to Magistrate Judge James Larson concerning the expert discovery  
11 dispute on May 25, 2010 (Docket No. 174);

12        WHEREAS, on June 29, 2010, Magistrate Judge Larson issued an order stating “it is hereby  
13 ordered that the TVS expert reports of Dr. Gradman and Dr. Draper are stricken, and TVS is  
14 precluded from relying on them in motions or at trial.” (Docket No. 196);

15        WHEREAS, VNUS only sought a court order striking the portions of the Gradman and  
16 Draper reports relating to enablement issues and precluding TVS from relying on such opinions;

17        WHEREAS, the Court’s June 29<sup>th</sup> order does not specify that only the enablement portions of  
18 the Gradman and Draper opinions were struck;

19        NOW THEREFORE, it is hereby stipulated and agreed by the respective parties by and  
20 through their counsel of record that TVS is not precluded from relying on the portions of the  
21 Gradman and Draper reports relating to non-infringement and testimony regarding the non-  
22 infringement opinions disclosed in said reports either in motions or at trial.

23              [Signatures on following page].

24              //

25              //

26              //

27              //

1 Dated: July 15, 2010

Respectfully Submitted,

2 BUCHE & ASSOCIATES, P.C.

3  
4 By: /s/ John Karl Buche  
5 John Karl Buche (SBN 239477)  
6 Sean M. Sullivan (SBN 254372)

7 Telephone: 858.459.9111  
8 Facsimile: 858.459.9120

9 ATTORNEYS FOR DEFENDANT TOTAL  
10 VEIN SOLUTIONS, LLC d/b/a TOTAL VEIN  
11 SYSTEMS

Dated: July 15, 2010

DAVIS POLK & WARDWELL LLP

12  
13 By: /s/ Chung G. Suh  
14 Matthew B. Lehr (SBN 213139)  
15 Suong T. Nguyen (SBN 237557)  
16 Chung G. Suh (Bar No. 244889)

17 Tel: (650) 752-2000  
18 Fax: (650) 752-2111

19 ATTORNEYS FOR PLAINTIFF TYCO  
20 HEALTHCARE GROUP LP d/b/a VNUS  
21 MEDICAL TECHNOLOGIES

I hereby attest that I have on file written (or e-mail) permission to sign this stipulation from all parties whose signatures are indicated by a "confirmed" signature (/s/) within this e-filed document.

Dated: 07/15/10

/s/ John K. Buche

John K. Buche

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: July 27, 2010

  
JAMES LARSON  
HON. JAMES LARSON  
U.S. MAGISTRATE JUDGE

John Karl Buche (SBN 239477)  
Sean M. Sullivan (SBN 254372)  
BUCHE & ASSOCIATES, P.C.  
875 Prospect, Suite 305  
La Jolla, California 92037  
Telephone: 858.459.9111  
Facsimile: 858.459.9120  
[jbuche@buchelaw.com](mailto:jbuche@buchelaw.com)  
[ssullivan@buchelaw.com](mailto:ssullivan@buchelaw.com)

Attorneys for Defendants,  
**TOTAL VEIN SOLUTIONS, LLC**

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

## **PROOF OF SERVICE**

V. )

BIOLITEC, INC., DORNIER MEDTECH  
AMERICA, INC., and NEW STAR LASERS,  
INC. d/b/a COOLTOUCH, INC.,

Defendants.

TYCO HEALTHCARE GROUP LP d/b/a  
VNUS MEDICAL TECHNOLOGIES, INC.,

Plaintiff.

v.

TOTAL VEIN SOLUTIONS, LLC d/b/a  
TOTAL VEIN SYSTEMS,

Defendant.

1  
2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, John Karl Buche, declare:

4 I am over the age of 18 years and not a party to this action. My business address is 875  
5 Prospect, Suite 304, La Jolla, California 92037, which is located in the county where the service  
6 described below occurred.

7 On Thursday, July 15, 2010, at La Jolla, California, I served the following documents entitled:

- 8 • **STIPULATION AND [PROPOSED] ORDER REGARDING CLARIFICATION OF  
9 ORDER ON PLAINTIFF'S MOTION TO STRIKE DEFENDANT TOTAL VEIN  
SOLUTIONS, LLC'S EXPERT REPORTS**

10 in the following manner:

11 I hereby certify that on Thursday, July 15, 2010, I electronically filed the foregoing document  
12 with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such  
13 filing to the following individual(s):

14 Attorneys for Plaintiff/Counter-defendant Tyco Healthcare Group LP d/b/a VNUS Medical  
Technologies, Inc.:

15 Matthew B. Lehr (matthew.lehr@dpw.com)  
16 Chung Gyun Suh (gemma.suh@dpw.com)  
17 Diem-Suong Thi Nguyen (nguyen@dpw.com)  
DAVIS, POLK & WARDWELL  
18 1600 El Camino Real  
Menlo Park, CA 94025

19 Attorneys for Defendant/Counter-claimant Biolitec, Inc.:

20 Michael Rader (mrader@wolfgreenfield.com)  
Charles T. Steenburg (csteenburg@wolfgreenfield.com)  
21 WOLF, GREENFIELD & SACKS, PC  
600 Atlantic Avenue  
22 Boston, MA 02210

23 Attorneys for Defendant/Counter-claimant Dornier Medtech America, Inc.:

24 A. Shane Nichols (snichols@kslaw.com)  
Richard W. Miller (rmiller@kslaw.com)  
25 KING & SPAULDING, LLP  
1180 Peachtree Street NE  
26 Atlanta, GA 30309-3521

*Attorneys for Defendant/Counter-claimant New Star Lasers, Inc, d/b/a Cooltouch, Inc.*

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Allan W. Jansen (ajansen@orrick.com)  
James W. Geriak (jgeriak@orrick.com)  
**ORRICK, HERRINGTON & SUTCLIFFE, LLP**  
4 Park Plaza, Suite 1600  
Irvine, CA 92614-2558

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Thursday, July 15, 2010, at La Jolla, California.

/s/ John Karl Buche  
JOHN KARL BUCHE